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TRANSCRIPT OF SENTENCING STATUS CONFERENCE  
BY TELEPHONE  
BEFORE THE HONORABLE LEE YEAKEL  
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Proceedings recorded by computerized stenography, transcript  
produced by computer.

10:59:51 1 (In chambers)

10:59:51 2 THE COURT: We're here today to discuss  
11:00:10 3 Cause 99-CR-274, *United States v. Karr*, which you're -- if you  
11:00:18 4 didn't have enough problems with the coronavirus, you now have  
11:00:21 5 a new one, and that is that I now have this case. And so I  
11:00:26 6 will be dealing with it instead of Judge Sparks.

11:00:28 7 So let me start with the government -- or, actually,  
11:00:35 8 with the defendant, and tell me who we've got on the line,  
11:00:38 9 please.

11:00:39 10 MR. ALDREDGE: Horatio Aldredge for Mr. Karr.

11:00:41 11 THE COURT: And for the government, now?

11:00:43 12 MR. HARDING: Matt Harding and Dan Guess for the  
11:00:47 13 government, Your Honor.

11:00:48 14 THE COURT: All right. Thank you-all.

11:00:49 15 Since, I received this case recently and have done  
11:00:53 16 somewhat of a review of it --

11:00:56 17 And you might want to mute your phones. I'm getting  
11:00:59 18 some background squealing and stuff. You can unmute when you  
11:01:03 19 speak.

11:01:03 20 Trying to come up to speed on what we have here and  
11:01:07 21 figure out what you've done and what you might want to do, I've  
11:01:11 22 got several questions I wanted to ask. So I look on this as a  
11:01:16 23 status conference, not really something where we're going to  
11:01:19 24 resolve a whole lot of things.

11:01:21 25 So let me start, because. Obviously going back to

11:01:27 1 1999, there's a rather lengthy docket sheet in this case. It  
11:01:31 2 really kind of picks up speed, you know, by the time we get to  
11:01:36 3 Document Number 167, which was in January of this year. But  
11:01:40 4 let me address this to Mr. Aldredge: Mr. Aldredge, what is  
11:01:44 5 your live pleading, because I see there were, you know, things  
11:01:54 6 styled request for this and request for that. What is your  
11:01:57 7 live pleading that this Court will take up at the appropriate  
11:02:01 8 time in this case?

11:02:04 9 MR. ALDREDGE: Well, I think the only live pleading I  
11:02:10 10 have is a motion for appointment of co-counsel. I'm hoping  
11:02:15 11 that the Court will appoint Christie Williams to be my  
11:02:20 12 co-counsel for resentencing, if that's where we end up. Right  
11:02:26 13 now the setting is for a resentencing after his two life  
11:02:30 14 sentences under 3559(c) were vacated after the government  
11:02:36 15 conceded. So right now what we're facing is resentencing I  
11:02:43 16 guess in January.

11:02:44 17 And since Ms. Williams was cocounsel at trial and is  
11:02:50 18 obviously very familiar with the case and the record, and  
11:02:54 19 equally has rapport with the client, she has the client's full  
11:02:59 20 trust and confidence, I'm hoping to get her appointed to help  
11:03:05 21 me out. I'm going to have to rely on her, and I feel like she  
11:03:09 22 ought to get paid for her work for this highly unusual  
11:03:13 23 circumstance. You know, I've never seen such a request by the  
11:03:17 24 public defender other than a potential capital case where  
11:03:23 25 statute authorizes additional counsel.

11:03:25 1 So that's where we are. I will say the -- after  
11:03:30 2 having said all that, that the government and I have talked  
11:03:34 3 about a settlement, and that is a possibility. But I don't  
11:03:40 4 know if that's going -- if we're going to get anywhere on that.

11:03:44 5 THE COURT: So the answer to my question is: The  
11:03:46 6 only live motion is to appoint co-counsel with you?

11:03:51 7 MR. ALDREDGE: That's right.

11:03:52 8 THE COURT: All right. Now, when I read what the  
11:03:55 9 Circuit did, it appeared the Circuit, their order is pretty  
11:04:03 10 simple and to the point where -- hold on just a minute.

11:04:27 11 All right. The Circuit merely said -- if the latest  
11:04:33 12 order we have from them is their order which was filed on  
11:04:43 13 January 17th, 2020, it appears all they said, they didn't say  
11:04:50 14 anything specifically about resentencing or ordering that.  
11:05:01 15 They cite *Davis* and other cases, and say: Accordingly, Karr  
11:05:06 16 has made a *prima facie* case that his claims are based on new  
11:05:07 17 and retroactive rule of constitutional law under 2255(h)(2).

11:05:12 18 That does not necessarily send the case back to this  
11:05:18 19 court for resentencing. It appears to say that Mr. Karr can  
11:05:26 20 file a subsequent *habeas* petition under 2255.

11:05:29 21 So did Judge Sparks presume that all that is in the  
11:05:32 22 case is to resentence? Do you presume that? Does the  
11:05:37 23 government presume that? Or at some point am I going to get a  
11:05:43 24 specific 2255 petition that requests me to do certain things?

11:05:53 25 MR. ALDREDGE: Your Honor, based on Mr. Karr's *pro se*

11:06:01 1 petition and the government's -- I'm sorry -- the Circuit's  
11:06:06 2 order that you just referenced, I did file an amended 2255.

11:06:11 3 THE COURT: Then that was my question, Mr. Aldredge.  
11:06:15 4 That was the initial question before I heard all the other  
11:06:19 5 things you wanted to share with me. What is your current live  
11:06:21 6 pleading?

11:06:24 7 MR. ALDREDGE: Your Honor, the petition has been  
11:06:26 8 granted. I don't know that it -- once it's granted, is it no  
11:06:29 9 longer live?

11:06:31 10 THE COURT: All right. So we're just going to  
11:06:36 11 proceed without specific requests from the defendant; is that  
11:06:39 12 correct? I'm just trying to get my hands around what you're  
11:06:43 13 asking for here. So is everybody --

11:06:45 14 MR. HARDING: Your Honor?

11:06:47 15 THE COURT: Is everybody comfortable with what we're  
11:06:50 16 going to do is resentence on counts four and five?

11:06:57 17 MR. HARDING: Your Honor, this is Matt Harding.

11:06:59 18 Mr. Aldredge did file a 2255, and we did respond to  
11:07:03 19 it. That's docket entry 176 in 99-CR-274. Our response  
11:07:09 20 conceded that counts two and three, the sentences had to be  
11:07:13 21 vacated. And so they're in an order, which is entry 177, that  
11:07:18 22 was dismissing an original 2255, granting his amended 2255, and  
11:07:27 23 then docket entry 178, there's a judgment dismissing his 2255,  
11:07:34 24 granting his amended motion, and vacating those sentences,  
11:07:39 25 Your Honor.

11:07:40 1 So I believe that Mr. Aldredge is technically  
11:07:44 2 correct, that essentially there is no further live pleadings,  
11:07:47 3 but there is an order by the court setting resentencing.

11:07:50 4 THE COURT: See how easy that was? That's all I  
11:07:52 5 wanted to know. What I'm trying to do is get us all on the  
11:07:59 6 same page as to where we are at this moment and what we're  
11:08:02 7 going to do.

11:08:02 8 Now, I'll start with that order, and that brings us  
11:08:09 9 to your motion to appoint additional counsel. Let me just say  
11:08:19 10 something. I don't try to get too preachy on this, but you're  
11:08:23 11 going to hear it more and more often. I really want everybody  
11:08:31 12 in criminal cases -- and I say this to civil lawyers, too -- to  
11:08:34 13 take more time with your work. You may think typos don't mean  
11:08:37 14 much, but what they say to the Court is: If you don't proof  
11:08:42 15 your own work, then it's an indication that you don't think  
11:08:46 16 it's important enough to proof, so why should I think that your  
11:08:52 17 work is important that you're presenting to me?

11:08:55 18 And so, you know, when I sit down with a cold file  
11:09:00 19 like this that I haven't been involved in since 1999, like  
11:09:03 20 Judge Sparks was, and I read a motion to appoint co-counsel  
11:09:08 21 that says the case is set for resentencing on January the 4th,  
11:09:12 22 2011, I just immediately wonder what's going on in the case.  
11:09:18 23 So I'm presuming you mean 2021, because that's what the order  
11:09:24 24 said. But it's a whole lot more helpful to the court if you  
11:09:28 25 get it right the first time.

11:09:30 1 So my question, then, is: Does this case have to  
11:09:34 2 wait until January of 2021 to have a sentencing hearing in it,  
11:09:41 3 or can we do it before that? What led in and what contact did  
11:09:46 4 you have with Judge Sparks that led up to the order that  
11:09:51 5 Mr. Harding references that set this as far off as  
11:09:55 6 January the 4th of 2021?

11:10:02 7 MR. ALDREDGE: Well, we had discussion with a law  
11:10:06 8 clerk who had indicated that we needed additional -- we needed  
11:10:09 9 time to discuss a settlement on the one hand. And, secondly,  
11:10:17 10 it was our belief based on an anecdotal evidence that there was  
11:10:22 11 no chance that the Bureau of Prisons would be able to transport  
11:10:29 12 him here within a couple of months -- you know, within two or  
11:10:34 13 three months anyway.

11:10:36 14 So why not set it out to -- our thinking was why not  
11:10:40 15 set it out to a point where we have ample time for all of that  
11:10:45 16 to happen and we can figure out whether or not, you know, we're  
11:10:49 17 going to reach a settlement. And, if not, then we'll have, you  
11:10:54 18 know three months to -- you know, say hopefully by October 1st,  
11:10:59 19 we can notify the Court that no settlement has been reached,  
11:11:02 20 and that way the marshals and the BOP will have three months'  
11:11:07 21 notice to get him here. That was our thinking.

11:11:11 22 THE COURT: Does the government concur in that?

11:11:14 23 MR. HARDING: Yes, Your Honor. We would like to have  
11:11:16 24 time to reach a settlement. And given the current  
11:11:19 25 circumstances, we do believe that transporting Mr. Karr here

11:11:23 1 could take a substantial amount of time, Judge.

11:11:25 2 THE COURT: Have you had any direct contact with the  
11:11:28 3 Bureau of Prisons or the Marshals Service on when that could  
11:11:33 4 occur?

11:11:39 5 MR. HARDING: I have not, Your Honor.

11:11:40 6 MR. ALDREDGE: No.

11:11:41 7 THE COURT: Well, I don't have a big problem with  
11:11:45 8 doing it in January. I will look at my calendar and see if I  
11:11:48 9 think the 4th is a realistic date, but we can do it sometime  
11:11:59 10 around January 4th. But, in the interim, in and around any  
11:12:02 11 discussions that you may be having about this case, somebody  
11:12:08 12 talk with the marshals or the Bureau of Prisons and try to find  
11:12:14 13 out, if there is not a satisfactory agreement reached between  
11:12:20 14 the two of you, what are the logistics of getting him down here  
11:12:25 15 and how much advance notice do they absolutely have to have  
11:12:31 16 before the January date to transport.

11:12:40 17 MR. HARDING: We will do that, Judge.

11:12:42 18 MR. ALDREDGE: Very well.

11:12:46 19 THE COURT: All right. Okay. So if we're going to  
11:12:58 20 resentence as to counts four and five -- let's presume you  
11:13:01 21 don't reach an agreement -- do you anticipate the probation  
11:13:09 22 department issuing a new presentence investigation report for  
11:13:16 23 use at the new sentencing hearing?

11:13:19 24 MR. HARDING: From the government's perspective,  
11:13:21 25 Judge, first off, it's counts two and three that have been



11:13:24 1 vacated.

11:13:24 2 THE COURT: Well, that's -- I thought I said that.

11:13:26 3 We're going to resentence on four and five. That's what -- oh,

11:13:30 4 two and three. I'm sorry. All right. Two and three -- no.

11:13:37 5 Two and three have been vacated, so we're going to resentence

11:13:41 6 on this case that just has four and five in it now; is that

11:13:46 7 right?

11:13:47 8 MR. HARDING: No, Judge. The issue in the case -- a

11:13:50 9 little background might be helpful.

11:13:53 10 THE COURT: Yeah. Give me the background, because I

11:13:54 11 read that as saying those were knocked out for purposes of

11:13:58 12 sentencing. So go ahead.

11:14:00 13 MR. HARDING: The conviction stands, but the sentence

11:14:02 14 is vacated. And, essentially, under the -- under earlier law,

11:14:07 15 there was sort of a three strikes rule, which is if you were

11:14:10 16 convicted of certain kinds of crime and you have three of them,

11:14:14 17 then you were given a mandatory life sentence under certain

11:14:18 18 circumstances.

11:14:19 19 After *Davis*, after the categorical approach after

11:14:23 20 *Johnson*, we concede that he no longer has the three predicate

11:14:28 21 offenses that would require a mandatory life sentence. And so

11:14:31 22 now two and three -- the mandatory life sentence that he

11:14:37 23 received under two and three have to be vacated, but he will be

11:14:40 24 sentenced under those because there's nothing wrong with the

11:14:42 25 conviction.

11:14:43 1 THE COURT: Okay. I'm with you. I apologize.

11:14:46 2 So do you anticipate -- I guess you do a new

11:14:49 3 presentence investigation report; is that correct?

11:14:52 4 MR. HARDING: Certainly there would need to be an

11:14:55 5 adjustment to guideline range and things of that nature. But

11:14:58 6 the underlying facts, you know, I don't believe there's

11:15:01 7 anything in the defense's motion that would require new

11:15:03 8 fact-finding or anything along those lines. I think the facts

11:15:08 9 at sentencing, to the extent they were established, would

11:15:10 10 stand. But in terms of 3553(a) factors, in terms of the

11:15:14 11 guidelines, I think those would be the more pertinent things

11:15:17 12 for the PSR to address.

11:15:19 13 THE COURT: Well, it is. But if I am conducting a

11:15:23 14 new sentencing hearing, I want you-all in agreement on what

11:15:29 15 presentence investigation report I am to examine, because we're

11:15:33 16 going to resentence. And the existing one was rendered some

11:15:39 17 years ago; it has new numerous addendums and items in it. It

11:15:45 18 seems to me that it might be more efficient that, even though

11:15:51 19 the factual basis, as you discuss, and the facts contained in

11:15:59 20 there might not be new, it might just be the old prose that is

11:16:03 21 brought forward, it seems to me that it might be clearer at the

11:16:10 22 sentencing hearing and clearer on any appeal by either the

11:16:17 23 government or the defendant that might arise out of that, if

11:16:20 24 it's absolutely clear what is relied upon.

11:16:22 25 I've been doing this long enough to know that a lot

11:16:25 1 of times at sentencing hearings, the path is not as clear to  
11:16:29 2 the Court and later to the appellate court as it is to each  
11:16:34 3 side or the other. And I'm in the process right now of writing  
11:16:40 4 a clarification of a sentence that I made because the  
11:16:44 5 government on appeal said they were uncertain as to how I  
11:16:49 6 arrived at my sentence.

11:16:50 7 I have reread the record, and I find no question of  
11:16:54 8 clarity, and I can't for the life of me explain why the  
11:16:59 9 government couldn't follow it. But that apparently is what's  
11:17:03 10 going on now, and I don't want to get down the line in this  
11:17:09 11 case and it get to the Circuit, and somebody said: Well, we  
11:17:12 12 don't know what the court considered from the probation  
11:17:15 13 department when the court accepted and adopted a presentence  
11:17:18 14 investigation report and then proceeded to follow it.

11:17:21 15 So I just want you to think about that, because --

11:17:25 16 MR. HARDING: Yes, sir. I'll get with Mr. Aldredge.

11:17:27 17 THE COURT: -- that's, you know, a problem that  
11:17:30 18 apparently is going to come up anew now that I haven't had. So  
11:17:34 19 I want to make sure we're looking at it.

11:17:37 20 Also, it's pretty clear that we may not be applying  
11:17:41 21 the guidelines as they existed in 1999 in this case. You  
11:17:47 22 addressed that, Mr. Harding, when you said there would have to  
11:17:49 23 be some updating on that. I want it made absolutely clear in  
11:17:53 24 the presentence investigation report, or however we work that  
11:17:57 25 out, which guidelines are being applied to the sentencing on

11:18:04 1 which counts.

11:18:09 2 And then I'm going to want to hear from you-all  
11:18:12 3 whether you agree well before we have a sentencing hearing that  
11:18:15 4 the probation department is evaluating a guideline sentence in  
11:18:21 5 this case based on additions of the guidelines that you agree  
11:18:27 6 on.

11:18:27 7 Do you understand that?

11:18:33 8 MR. HARDING: Yes, sir, Judge. I think Mr. Aldredge  
11:18:36 9 mentioned earlier filing an advisory with the court about  
11:18:37 10 whether we reached a settlement. I think there might be other  
11:18:40 11 issues we can include in that advisory, to the extent we can  
11:18:42 12 agree on those issues, and that way it will give the Court  
11:18:46 13 several months of advance notice.

11:18:48 14 THE COURT: All right. Mr. Aldredge, I understand  
11:18:53 15 that you have -- from your motion that you have spoken with  
11:18:57 16 Ms. Williams, and she is amenable and agreeable to become  
11:19:04 17 co-counsel in this case for sentencing, if I name her  
11:19:06 18 co-counsel and arrange for her to be paid; is that correct?

11:19:11 19 MR. ALDREDGE: Yes, Your Honor. That is correct. In  
11:19:13 20 fact, we've had a telephone conference, both she and I and  
11:19:22 21 Mr. Karr, and Mr. Karr also wishes for that to happen.

11:19:28 22 THE COURT: All right. Well, I will do that. And  
11:19:38 23 then I'm going to look at the existing scheduling order with an  
11:19:41 24 eye toward January the 4th and will let you know whether the  
11:19:44 25 existing order remains in effect and we're going to schedule a

11:19:47 1 sentencing hearing on January the 4th or whether I need to  
11:19:50 2 adjust that date slightly. I won't move it far off of that if  
11:19:56 3 I have to move it. We will still get it done in January.

11:20:01 4 So I think you have now answered all of my questions.  
11:20:05 5 Is there anything further we ought to talk about at this point  
11:20:09 6 while I've got you on the phone?

11:20:14 7 MR. ALDREDGE: No, Your Honor.

11:20:14 8 MR. HARDING: Not from the government.

11:20:15 9 THE COURT: All right. Thank you-all. Have a good  
11:20:17 10 day and have a good weekend. Mr. Harding, Mr. Guess, I tried  
11:20:20 11 to do this in the morning on Friday for the United States  
11:20:25 12 Attorney's Office because I've learned over the years how much  
11:20:27 13 you cherish your Friday afternoons.

11:20:33 14 MR. HARDING: Thank you, Judge.

11:20:36 15 MR. ALDREDGE: Thank you very much, Judge.

11:20:37 16 (End of transcript)

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1 **UNITED STATES DISTRICT COURT        )**

2 **WESTERN DISTRICT OF TEXAS            )**

3       I, Arlinda Rodriguez, Official Court Reporter, United  
4 States District Court, Western District of Texas, do certify  
5 that the foregoing is a correct transcript from the record of  
6 proceedings in the above-entitled matter.

7       I certify that the transcript fees and format comply with  
8 those prescribed by the Court and Judicial Conference of the  
9 United States.

10       WITNESS MY OFFICIAL HAND this the 31st day of March 2021.

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12                               /S/ Arlinda Rodriguez  
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ARLINDA L. RODRIGUEZ, OFFICIAL COURT REPORTER  
U.S. DISTRICT COURT, WESTERN DISTRICT OF TEXAS (AUSTIN)